

**TRIBAL EMPLOYMENT RIGHTS OFFICE
RULES FOR HEARINGS BEFORE TERO COMMISSION
(As Amended June 10, 1998)**

These Rules are adopted by the authority granted by Section 13.3.2(C) of Tribal Ordinance 2-80 (as amended April 27, 1995) which directs the TERO Commission to "Promulgate simple and fair rules of procedure to govern its adjudications, and is authorized to issue compliance orders and to impose civil penalties in the form of fines."

These Rules incorporate relevant provisions of Tribal Ordinance 2-80 (as amended April 27, 1995) and Tribal Resolution 91-71A (as amended March 6, 1995); and supersede all previous rules adopted by the TERO Commission.

*These Rules shall apply to all complaints and appeals filed with TERO after the date of their adoption. They will be strictly interpreted and applied. **Failure to comply can be grounds for dismissal.***

I. PRE-HEARING PROCEDURES.

A. TERO Director Pre-Hearing Investigation and Report.

1. The Director shall conduct a pre-hearing investigation by interviewing both parties to determine whether a conciliation agreement can be reached.
2. The Director shall report to the Commission on every complaint properly filed with the office and investigated. If upon investigation the Commission determines there is reason to believe a violation has occurred, the Commission may schedule a hearing on the matter or may take enforcement actions as provided by the Tribal Employment Rights Ordinance. Within twenty (20) work days after receipt of the complaint, and as needed thereafter, the Director shall provide the complaining party and the party complaint is against, a written report of the results of the investigation and a copy of these rules. This time period may be adjusted upon mutual written agreement of the parties. The report shall include a clear explanation of the Commission's preliminary findings and recommendations, and the parties' right to a hearing before the Commission.
3. The Director shall investigate every appeal of employee grievance decisions under the Personnel Policies and Procedures filed with the office. If the Director determines that the employee grievance remains unresolved, the Director shall, within twenty (20) work days after receipt of the grievance appeal, provide to the employee and his/her employer (i.e. Department Head or Board of Directors) a written report of the results of the investigation and a copy of these rules. The report shall include a clear explanation of the Director's findings and recommended decision, and the parties' right to a hearing before the Commission. This time period may be adjusted upon mutual written agreement of the parties.

B. Request for Hearing.

1. Any and all requests for a hearing must be made in writing and must be received at TERO no later than ten (10) calendar days after mailing or personal delivery of the report referred to above. Five (5) additional calendar days shall be added to the time to request a hearing before the Commission if the report is mailed.
2. Hearing notices shall be sent by regular first-class mail or delivered to each of the identified parties involved in the matter, and shall be publically noticed, at least twenty (20) work days before the hearing date. All notices shall include information about the deadlines for witness lists and document production set forth in Sections I.D and I.E below.
3. The hearing shall be commenced no later than thirty (30) work days after receipt of the request for hearing.
4. These time periods may be adjusted upon mutual written agreement of the parties.
5. The Commission shall designate a hearing officer to preside over the hearing.

C. Status Conferences.

As soon as possible after receipt of a request for hearing, a status conference may be held to set a hearing date, to discuss necessary documents, and to discuss the number and availability of witnesses. This may be done by conference call.

D. Witnesses.

1. No later than fifteen (15) work days prior to the hearing, each party shall submit in writing to TERO and the other party, a list of witnesses each intends to call on its behalf. Furthermore, the witness list shall indicate which witnesses must be subpoenaed, the order in which they will be called and the estimated length of each witnesses' testimony. The Director shall then issue and serve each subpoena. The subpoena shall identify which party requested the subpoena, the date and time of the hearing, and location of the hearing. Failure to comply with the requirements of this section shall result in exclusion of any witness not listed.
2. Written statements of witnesses shall be admitted into evidence only when a witness cannot appear in person and only when all parties agree.
3. The Commission may impose fines on witnesses who, without good cause, fail to appear after having been served with a subpoena within a reasonable period of time

prior to the date of the hearing.

4. Subpoenas are not necessary for witnesses to be called by Tribal entities or departments by whom they are employed. They can instead be directed to appear as a duty of their employment.

E. Documents.

1. No later than fifteen (15) work days prior to the hearing, each party shall submit in writing to TERO and the other party, a list of relevant documents it wishes to have subpoenaed from the other party(s).
2. No later than thirteen (13) work days prior to the hearing, the Director shall issue and serve (by regular mail or personal delivery) subpoenas for all relevant items listed, as well as items Director determines will be needed by the Commission.
3. Subpoenas shall require delivery of the documents directly to the party requesting them no later than seven (7) work days prior to the hearing.
4. No later than four (4) work days prior to the hearing, each party shall deliver copies of the documents the party intends to introduce during the hearing as follows:
 - a. One (1) copy of each document to the other party(s); and
 - b. Six (6) copies to TERO, unless otherwise directed in writing by the TERO Commission.
5. Any disputes concerning documents shall be brought to the Director who shall, with assistance of the Hearing Officer as required, resolve such disputes.
6. Documents which are not exchanged consistent with this rule shall not be admitted into evidence.

F. Motions.

Any procedural motions such as motions to disqualify a Commissioner shall be submitted in writing to TERO and mailed or personally delivered to the other party no later than ten (10) work days prior to the hearing. Such motions shall clearly state the facts and law upon which they are based. Any response to such motions shall be submitted in writing to TERO and mailed or delivered to the other party no later than four (4) work days prior to the hearing, and shall clearly set forth the facts and law upon which it is based.

G. Review of TERO Files.

The parties shall have the right to review the case file of the Director by scheduling a visit to TERO during regular work hours at any point after receiving notice of hearing. However, the Director shall have the right to "sanitize" any portion of the file to protect confidential information. The file shall be sanitized in a manner that causes loss of the least amount of relevant information from the file.

H. Postponements.

Any request for a postponement of the hearing must be submitted in writing to the Director no fewer than three (3) work days prior to the hearing. However, if the parties mutually submit a request for postponement because there is a possibility of settling the matter, the request for postponement may be submitted at any time.

I. Facsimiles.

Any documents referred to above in B1, D1, E1, F and H may be filed or delivered by facimile transmission (no later than 5:00 p.m.) so long as the documents are mailed on the same day as the facsimile transmission.

II. CONDUCT OF THE HEARING.

A. Hearing Officer.

The Director or the Commission's legal counsel shall serve as Hearing Officer, and control the proceedings. He/she shall take whatever action is necessary to insure an equitable, orderly, and expeditious hearing. Parties shall abide by the Hearing Officer's rulings. The Hearing Officer has the authority, among others, to:

- 1) Administer oaths or affirmations;
- 2) Regulate the course of the hearing;
- 3) Rule on offers of proof and the admissibility of documents;
- 4) Limit the number of witnesses when testimony would be unduly repetitious; and
- 5) Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.

B. Parties and Spokespersons.

1. Each party is entitled to be represented by a spokesperson of their own choosing. However, the spokesperson may be an attorney only in an appeal from an employee grievance decision which resulted in termination.
2. All parties are entitled to be present for the entire hearing. In addition to having a spokesperson, any party which is an entity, such as a business or a Tribal department or board, may be present through a person it may designate.

C. Stenographic Reporter.

1. All hearings shall be reported by a licensed stenographic reporter designated by the Commission. However, if a stenographic reporter is not available, a proceeding may be tape recorded with the agreement of all parties.
2. Any party may request transcripts or portions of transcripts directly from the stenographic reporter, so long as the requesting party pays the cost directly to the stenographic reporter. If the Commission requests a transcript, for other than its deliberations, it shall provide copies to the parties at no charge.

D. Evidence Standards.

Parties may object to the form of a question (e.g. leading questions or compound questions) or irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. Commission shall exclude any testimony or documents that it deems clearly irrelevant in order to keep control of the hearing. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in court civil cases.

E. Audience.

All hearings involving appeals of employee grievances shall be held in executive session.

F. Order of the Hearing.

The complaining party has the burden of proof and shall present its case first. However, in appeals of employee grievances, the employing entity has the initial burden of proof and shall present its case first.

1. Opening Statements. The parties shall be afforded the opportunity to present opening statements to explain what they intend to prove during the hearing. The responding party may make their opening statement either immediately after the other party's opening statement or immediately before their own presentation of evidence.
2. Presentation of Evidence. The parties may present evidence through the introduction of documents and/or the testimony of witnesses. Both parties may examine their own witnesses and cross-examine the witnesses of the other parties. However, no harassment or efforts to intimidate witnesses will be permitted. The Commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.
3. Closing Statements. The parties shall be afforded the opportunity to present closing statements to explain how the evidence supports what they intended to prove.

III. THE DECISION.

The decision shall be in writing and mailed to the parties no later than twenty (20) work days after close of the hearing by first-class mail, return receipt requested. If the Commission requires a transcript to assist it in making a decision, the hearing will be deemed closed upon its receipt. The decision shall consist of the following parts, in the following order:

- A. The procedural and substantive issues presented;
- B. The findings and basis for the findings;
- C. The orders and/or sanctions imposed, if any;
- D. Information on the right to appeal;
- E. Information on the authority of the Commission to act if the party fails to comply with its orders or fails to appeal; and
- F. The injunctive or bonding requirements, if any, that the Commission will seek from the Tribal Court pending the completion of the appeal, if an appeal is filed, or the running of the time for the appeal if no appeal is filed.